LIBRARY
SUPREME COURT, U. S.

No. 71-320

FILED
OCT 7 1971
ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1971

AMPEX CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

PETER G. NASH,
General Counsel,
National Labor Relations Board,
Washington, D.C. 20570.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-320

AMPEX CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

---

1. On April 22, 1971, the court of appeals issued its opinion holding that the Board's order against petitioner should be enforced, except in one respect not material here (Pet. App. 1a-7a). The Board's order ran against "Ampex Corporation, Elk Grove Village, Illinois division, its officers, agents, successors, and assigns" (R. 197).[1] On May 19, 1971, the

[1] "R." refers to the Appendix to the briefs in the court of appeals.

court entered a judgment which inadvertently omitted the qualifying phrase "Elk Grove Village, Illinois division." On June 14, 1971, upon stipulation of the parties, the judgment was amended solely for the purpose of adding that qualifying phrase and thereby conforming the judgment to the court's April 22 decision. (Pet. App. 8a-9a.)

Since the amendment to the judgment had no bearing on the issue on which certiorari is sought and was merely a technical correction, the 90-day period for filing a petition for a writ of certiorari, prescribed by 28 U.S.C. 2101(c), began to run on May 19, 1971, when the judgment was first entered, rather than on June 14, 1971, when it was amended. See *Federal Trade Commission* v. *Minneapolis-Honeywell Co.*, 344 U.S. 206, 211, 213. Counting from May 19, 1971, the 90-day period expired on August 17, 1971. The petition was not filed until September 1, 1971, and no extension of time was obtained. The petition is thus untimely and should be denied.

2. In any event, the question on which certiorari is sought—whether the employee organization (the Committee) which petitioner was found to have unlawfully dominated and assisted constitutes a labor organization[2]—raises no issue warranting further

---

[2] Section 8(a)(2) of the National Labor Relations Act (Pet. 2) makes it an unfair labor practice for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it * * *." Section 2(5) defines "labor organization" as "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole

review. The Board found that the Committee regularly raised and discussed "grievances" as well as questions and suggestions about "wages," "hours of employment," and "conditions of work" (R. 168-171). Committee proposals were often approved at employee meetings or thereafter, and, as a result of employee complaints, changes were made therein (R. 48). Minutes of Committee proceedings were kept; and, after they were typed, copies were distributed to the employees and posted on the plant bulletin boards (R. 48, 49). These facts amply support the conclusion that the Committee was a labor organization within the meaning of the Act, despite the absence of a formal structure or elected representatives. *National Labor Relations Board* v. *Cabot Carbon Company*, 360 U.S. 203, 210-212; *Pacemaker Corp.* v. *National Labor Relations Board*, 260 F. 2d 880, 883 (C.A. 7).

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

PETER G. NASH,
General Counsel,
National Labor Relations Board.

OCTOBER 1971.

---

or in part, of dealing with employers concerning grievances, * * * wages, rates of pay, hours of employment, or conditions of work" (Pet. 2).

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 445992 235